

SW



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,183	12/18/2001	Noel Gabard	683K US 3835	1648

466 7590 11/21/2003

YOUNG & THOMPSON  
745 SOUTH 23RD STREET 2ND FLOOR  
ARLINGTON, VA 22202

EXAMINER

MITCHELL, KATHERINE W

ART UNIT	PAPER NUMBER
----------	--------------

3677

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/018,183

Applicant(s)

GABARD, NOEL

Examiner

Katherine W Mitchell

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,9-18 is/are rejected.
- 7) ☒ Claim(s) 3,4,8,19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

### **DETAILED ACTION**

All priority papers have been received and entered.

Preliminary Amendment filed 12/18/2001 has been entered

Amendment filed 9/25/2003 has been entered.

Claim 21 has been cancelled. Claims 1-20 are pending.

### ***Specification***

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use. In particular, the method described line 7 page 1 – line 4 page 2 should be under a heading "BACKGROUND OF THE INVENTION" as it is later described as a method with shortcomings.

### **Arrangement of the Specification**

2. As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.

(b) CROSS-REFERENCE TO RELATED APPLICATIONS.

(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR  
DEVELOPMENT.

(d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A  
COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer

Art Unit: 3677

program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or

REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a).

"Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

3. The possible use of trademarks has been noted in this application on page 14 lines 29-30. A trademark should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

***Drawings***

4. The drawings filed on 18 Dec 2001 are acceptable subject to correction of the informalities indicated on the attached "Notice of Draftsperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this application, correction is required in reply to the Office action. The correction will not be held in abeyance.

***Claim Objections***

5. Claim 11 is objected to because of the word "transversally". Examiner will assume --transversely--.

6. Claims 16 and 17 are objected to because of the use of "and/or" in lines 4 and 3 respectively. It is unclear what is included in the claim.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 5, 9, 10-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is rejected because the tool comprises "at least one chamfered edge and preferably the rear rim. Examiner does not know how "preferably the rear rim" relates to at least one chamfered edge, and does not know if one or both are included.

Claim 9 is rejected because applicant discloses structural details of the rim (the side, the free side) without providing antecedent basis.

Claim 10 is rejected because of the following informalities: "The different modules" lacks antecedent basis, and examiner is unable to determine whether all modules are required, and whether all modules must be connected. For examination purposes, examiner is assuming only a modular structure of at least 2 modules is required. Appropriate correction is required.

Claim 11, 12, 14, and 15 are rejected as having a range within a range. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

In the present instance, claim 11 recites the broad recitation "several sections", and the claim also recites "notably at least three sections" which is the narrower statement of the range/limitation.

Claim 12 recites the broad recitation "between 2 and 10 mm", and the claim also recites "preferably in the order of 4 mm" which is the narrower statement of the range/limitation.

Claim 14 recites the broad recitation "elastomer material", and the claim also recites "a reinforced material", and the claim also recites "a reinforced polyurethane material" which is the narrower statement of the range/limitation.

Claim 15 recites the broad recitation "longitudinal bands", and the claim also recites "notably into two bands" which is the narrower statement of the range/limitation

Claim 12 is also rejected because the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 11-13 are also rejected as depending from claim 10.

Claim 16 is also rejected as depending from claim 10.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-2, 6,7,10 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamawaki et al. USP 5178221, hereafter called Hamawaki, in view of Fulton USP 2127510.

Re claim 1 and 18: Hamawaki teaches in the abstract, col 4 lines 34-45, can col 5 lines 16-33 a device and method using said device for aerating soil (abstract) said device may move transversally (wheels/drive roller 3 and 45) and be raised (col 6 lines 30-39 and col 3 lines 32-37) comprising frame (2) and tools mobile with respect to frame (22 and 24 on 19, col 3 lines 61 – col 4 line 5) intended to sample cores in the soil (abstract, col 4 lines 6-15). The cores are ejected and stored in device (col 4 lines 6-45). The device comprises a receiving member (unit B) integral with frame (connectors 37 -- it has been held that the term “integral” is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973)) and arranged between the soil and the ejection area and exhibiting an upper face and a lower face (Figs. 1 and 7), said receiving member comprising a flexible carpet (Figs 2 and 7, col 5 lines 1-33) resting on the soil by at least one section of its lower face whereby the falling cores are stored on the upper face of the carpet (Fig 7, col 5 lines 16-33, col 5 line 66-col 6 line 29). However, Hamawaki does not teach that the carpet has through openings for the tools. Hamawaki teaches a press plate (29) in Figs. 1 and 7, which is further described in col 4 lines 34-39 as a fork-form pressing plate that runs along the ground and thru which the tines extend {through openings}. Thus Hamawaki has in essence a two-part collector, with “B” and “29” comprising the 2 parts. Note in Fig. 7 that the edge 52 of core gathering apparatus B extends over the edge of 29 and 29 serves to press down the soil surrounding the tines so the earth doesn't pile up when the tines are inserted in the soil. Fulton teaches in page 3, col 2, lines 48-71 and Figs 1,2, and 5 a carpet with openings for the drills (44)



Art Unit: 3677

which cut out soil plugs. There are opening (Fig 5) through which the drills pass and which also serve to allow tamping rods 59 to insert fertilizer or sand into the holes just made. Therefore, it would have been obvious to one of ordinary skill in the art, having the teachings of Hamawaki and Fulton before him at the time the invention was made, to modify Hamawaki to include a receiving member comprising a collecting carpet with through holes for the tools as taught by Fulton in order to obtain a device for collecting the plugs from its aeration step without the risk of spilling the soil, while pressing the undisturbed soil down to prevent clogging and ensuring smooth sliding of the equipment along the ground (page 3 col 2 lines 27-35). One would have been motivated to make such a combination because it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893), and obviously tools passing into and out of the soil need openings to access the soil.

Re claim 2: The receiving member (107) attached to a holding down clamp (108) is shown in Fig 1 and described in page 3 col 2 lines 27-35 of Fulton. Therefore, it would have been obvious to one of ordinary skill in the art, having the teachings of Hamawaki and Fulton before him at the time the invention was made, to modify Hamawaki to include a receiving member attached to a holding down clamp as taught by Fulton in order to obtain a plate which does not dig in the earth, ensuring smooth sliding of the equipment along the ground (page 3 col 2 lines 27-35). One would have been motivated to make such a combination because a receiving plate pressing against

the soil would need a connection to the main apparatus to pass smoothly over the ground without digging in at an edge or side.

Re claim 6: A deflecting member (30) for the cores, fixed to the frame and placed at the rear of the ejection area is taught by Hamawaki in Fig 7.

Re claim 7: Hamawaki teaches that the receiving member has along its free lateral edges rims (Side plates 33 and guides 66) to maintain the waste on the member in col 4 lines 51-61 and col 6 lines 18-22 respectively, as also shown in Figs 1 and 2.

Re claim 10: As best understood, Hamawaki teaches a modular receiving member (B) with different modules connected by dismountable joints in Fig 2. The modules comprise the transfer plate section, conveying sections, collecting box section.

Re claim 17: A means enabling the carpet to be raised is taught by Hamawaki is disclosed in col 6 lines 30-39. Note that the "ground contact 50" should be --ground contact 51--, as no ground contact 50 has ever been disclosed. The ground contact was described in col 5, lines 16 and 25-26 as ground contact 51.

***Allowable Subject Matter***

11. Claims 3-4, 8, and 19-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 5, 9, and 11-16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Art Unit: 3677

13. The allowability is based upon the limitations of specific structures in/of the receiving member carpet. While plates with similar features are known, examiner finds no motivation to combine with a soil aeration device which moves and has the carpet contacting the ground when the plugs are formed. A multipart flexible carpet with dismountable joints between the parts is also considered to be novel over the cited art.

**Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W Mitchell whose telephone number is 703-305-6713. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4180.

Kwm  
11-10-2003

  
ROBERT J. SANDY  
PRIMARY EXAMINER